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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,709	04/11/2001	Karla E. Williams	460.2050USU	1658

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,709

Applicant(s)

WILLIAMS ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,10-15,20-24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 and 27 is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,10-15,20-24,28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 8/9/04 have been fully considered but they are partially persuasive. Regarding the rejection of claims 1, 5, 24, and 28-30 as being anticipated by Jacob USPN 4722936, applicant's arguments are not persuasive. Applicant repeats the argument that Jacob only disclosed the use of ascorbic acid primarily for its antitoxin effect and secondarily for its deodorization effect and the glycerin is an inert ingredient that serves as a carrier for the ascorbic acid. While, the examiner agrees that the glycerin itself does not serve as a malodor counteractant in the invention of Jacob, the ascorbic acid does, as Jacob explicitly teaches ascorbic acid as a deodorant (Abstract, col. 7, line 6 through col. 8, line 3). Therefore, even though Jacob teaches the ascorbic acid as an antitoxin, the ascorbic acid still performs the function of a malodor counteract and meets the limitations of claim 1. The examiner has relied on the teaching of ascorbic acid as a malodor counteractant because it is widely known that ascorbic acid is an organic acid, which is broadly interpreted as a biological agent, naturally occurring deodorizing active, solution of soluble natural compound, all of which are included in the Markush group of claim 1.

2. In response to applicant's argument that Yabrov does not disclose a tampon efficient at eliminating vaginal odor, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied

upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Yabrov is considered analogous art because Yabrov discloses the glycerin is used for neutralizing odor caused by hydrogen sulfide gas (col. 4, lines 41-43), which is one of the gases associated with menstrual fluids. For example, Yi et al. US 2003/0093043 teaches hydrogen sulfide as a chemical produced during menstrual periods (paragraph 0050). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the invention of Yabrov in an article for absorbing hydrogen sulfide gases produced during menstruation, and the teaching of glycerin as a neutralizer in Yabrov would also be effective if used for the same purpose in a deodorant tampon.

In response to the criticality of the amount of malodor counteractant in the claimed invention, . The invention of Yabrov has the same properties and is used in the same environment as applicant's invention – as a deodorant for gases emitted from the body. Therefore, the general conditions of the claimed invention are present in the prior art. Even though Yabrov does not disclose the specific amounts of the deodorant composition, it is within the level of one of ordinary skill in the art to determine the appropriate amount of additive for a particular application. The claims are structural claims and apart from how it is used, results in a article for counteracting malodor from gases emitted from the body. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the article of Yabrov amount of malodor counteractant materials, since where the general conditions

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of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, In re Aller et al. 105 USPQ 233.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 24, and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacob USPN 4722936.

As to claims 1 and 28, Jacob discloses a tampon for absorbing body fluids comprising: one or more malodor counteractant materials selected from the claimed group of materials, wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 3 – Jacob discloses the ascorbic acid is applied to the tampon in liquid form and allowed to dry). It is old and well known that ascorbic acid is Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic form. Jacob discloses one or more malodor counteractant materials is present in an amount between 100mg and 500mg, which is included in the claimed range (col. 4, lines 32-47).

As to claims 5, 29, and 30, Jacob discloses one or more malodor counteractant materials is present in an amount between 100mg and 500mg, which is included in the claimed range (col. 4, lines 32-47).

As to claim 24, Jacob discloses a method of deodorizing a vaginal area comprising apply the tampon of claim 1 to the vaginal area, wherein one or more malodor counteractant materials counteracts malodor in the vaginal area (col. 1, lines 57-61; col. 3, lines 5-7, and lines 54-63; and col. 4, lines 1-7). It is old and well known that ascorbic acid is Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic form.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 3, 6, 7, 10-15, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yabrov USPN 4880417.

As to claims 1, 3, 6, 7, 10-13, and 20-22, Yabrov discloses glycerin and a fragrance as a malodor counteractant material (col. 4, lines 21-24). Yabrov does not specifically disclose his invention as a tampon. Yabrov discloses the glycerin is used for neutralizing odor caused by hydrogen sulfide gas (col. 4, lines 41-43). It is old and well known that hydrogen sulfide gas is one of the gases associated with menstrual fluids. For example, Yi et al. US 2003/0093043 teaches hydrogen sulfide as a chemical produced during menstrual periods (paragraph 0050). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the invention of Yabrov in an article for absorbing menstrual fluids, such as a tampon. Yabrov discloses the malodor counteractant material is present in liquid form (col. 4, lines 26-31). Additionally it is old and well known that glycerin is a natural substance.

Yabrov is silent on the claimed amount of counteractant material present in the absorbent. However, one having ordinary skill in the art would be able to determine through routine experimentation the ideal levels malodor counteractant for a particular application.

As to claim 14, Yabrov discloses the fragrance is in liquid form (col. 4, lines 31-32).

As to claims 15 and 23, Yabrov does not disclose the additional malodor counteractant is naturally sourced. Yabrov discloses a fragrance as an additional malodor counteractant and teaches any appropriate material by be used in addition to the glycerin. Many naturally sourced products such as fragrant oils are used as masking agents or perfuming agents in absorbent articles. It would have been within the level of one of ordinary skill in the art to use a naturally sourced masking agent as the additional malodor counteractant.

Allowable Subject Matter

8. Claims 26 and 27 are allowed. The following is a statement of reasons for the indication of allowable subject matter: As to independent claims 26 and 27, the method of deodorizing a vaginal area using the overall claimed combination of a malodor counteract material comprising glycerin and at least one additional malodor counteractant material selected from the claimed Markush group is neither anticipated nor rendered obvious by the prior art of record.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Examiner
Art Unit 3761

November 12, 2004